

HOUSE BILL NO. 532

INTRODUCED BY B. MERCER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO PRIVACY AND THE PUBLIC RIGHT
5 TO KNOW; PROVIDING REQUIREMENTS FOR THE ~~DEPARTMENT OF ADMINISTRATION FOR~~
6 ~~COMPROMISE AND SETTLEMENT OF CLAIMS; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO~~
7 ~~CREATE AND MAINTAIN A WEBSITE PUBLISHING INFORMATION ON COMPROMISE AND SETTLEMENTS;~~
8 ~~REQUIRING THE DEPARTMENT OF JUSTICE TO MONITOR THE WEBSITE AND INVESTIGATE AND~~
9 ~~PROSECUTE ANY VIOLATIONS;~~ PROVIDING RECORDS RELATED TO A COMPROMISE OR SETTLEMENT
10 OF CLAIMS AGAINST THE STATE MUST BE RETAINED FOR 20 YEARS; AMENDING SECTIONS 2-9-101,
11 2-9-301, AND 2-9-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
12 APPLICABILITY DATE."

13
14 WHEREAS, THERE IS A STRONG PUBLIC POLICY SUPPORTING THE PUBLIC'S RIGHT TO KNOW THE PRECISE
15 REASON FOR THE EXPENDITURE OF PUBLIC MONEY TO SETTLE CLAIMS AGAINST THE GOVERNMENT, AS DISCUSSED IN
16 CITIZENS TO RECALL WHITLOCK V. WHITLOCK, 255 MONT. 517, 524, 844 P.2D 74, 78 (1992); AND

17 WHEREAS, THE CONCEPT OF ACCOUNTABILITY OF GOVERNMENT INCLUDES ACCOUNTABILITY OF HOW
18 TAXPAYER DOLLARS ARE SPENT; AND

19 WHEREAS, ANYTHING THAT PROHIBITS DISCLOSURE OF HOW TAXPAYER DOLLARS ARE SPENT INHIBITS THE
20 PUBLIC'S RIGHT TO KNOW UNDER ARTICLE II, SECTION 9, OF THE MONTANA CONSTITUTION AND WILL RARELY BE
21 PRECLUDED BY THE RIGHT TO PRIVACY CONTAINED IN ARTICLE II, SECTION 10, OF THE MONTANA CONSTITUTION; AND

22 WHEREAS, THE LEGISLATURE'S INTENT IS TO CREATE SUNSHINE AND TRANSPARENCY WHEN PUBLIC MONEY IS
23 USED TO SETTLE CLAIMS BASED ON THE ACTS OR OMISSIONS OF STATE EMPLOYEES AND STATE ACTORS.

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

26 (Refer to Introduced Bill)

27 Strike everything after the enacting clause and insert:

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29 NEW SECTION. Section 1. Short title. [Sections 1 through 3] may be cited as the "Sunshine and
30 Transparency Act for the State's Settlement of Claims".

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2 **NEW SECTION. Section 2. Requirements for compromise and settlement of claims against state.**

3 (1) The department of administration shall create, monitor, maintain, and update, on an ongoing basis, a website
4 that is available to the public and publishes the following information:

5 (a) the date of each compromise or settlement of a claim against the state that results in a monetary
6 settlement;

7 (b) the identity of the entity of the state where the claim originated;

8 (c) the dollar amount of the compromise or settlement.

9 (2) All information regarding the compromise or settlement of a claim involving a minor is exempted from
10 disclosure.

11 (3) The information identified in subsection (1) must be published within 30 days of the date the
12 compromise or settlement occurred.

13 (4) Nondisclosure agreements are prohibited in compromise or settlement agreements when the state
14 is a party.

15 (5) Whenever the state pays any public money in the compromise or settlement of a claim and in
16 employment-related claims, including but not limited to employment discrimination and sexual harassment and
17 claims that arise from alleged acts regardless of whether the alleged acts occurred within or outside of an
18 employee's scope of employment, the claim must be consistently coded in the statewide accounting, budgeting,
19 and human resource system so that whenever the state authorizes the compromise or settlement of a claim, the
20 money expended to compromise or settle claims is consistently reflected and coded under the same code to
21 ensure that whenever the particular code is reviewed it will contain a complete list of all compromise and
22 settlement of claims when the state is a party.

23 (6) (a) A state employee who violates [section 2 or 3] is subject to a civil penalty of not more than \$500.

24 (b) The state employee or employees responsible for each violation are also subject to potential
25 discipline.

26
27 **NEW SECTION. Section 3. Quarterly report on demands to resolve claims.** Each agency and
28 administratively attached entity shall submit a quarterly report to the legislative fiscal division capturing:

29 (1) all initial demands to resolve claims, including demands made to any state agency or department;

30 (2) the identity of the entity of the state that employed the employee who committed one or more acts

- 1 leading to the claim, regardless of where the demand for compromise or settlement originated;
- 2 (3) all civil and administrative complaints filed and the identity of the court or entity of the state where
- 3 the complaint is filed; and
- 4 (4) all requests for settlement negotiations and the amount requested to resolve the claim.

5

6 **Section 4.** Section 2-9-101, MCA, is amended to read:

7 **"2-9-101. Definitions.** As used in parts 1 through 3 of this chapter and [sections 1 through 3], the

8 following definitions apply:

9 (1) (a) "Claim" means any claim against a governmental entity, for money damages only, that any person

10 is legally entitled to recover as damages because of personal injury or property damage caused by a negligent

11 or wrongful act or omission committed by any employee of the governmental entity while acting within the scope

12 of employment, under circumstances where the governmental entity, if a private person, would be liable to the

13 claimant for the damages under the laws of the state. For purposes of this section and the limit of liability

14 contained in 2-9-108, all claims that arise or derive from personal injury to or death of a single person, or damage

15 to property of a person, regardless of the number of persons or entities claiming damages, are considered one

16 claim.

17 (b) Employment-related claims, including but not limited to employment discrimination and sexual

18 harassment, and other claims against the state that may not be tort claims are included in this definition.

19 (c) Claims against a government entity that arise from alleged acts that occurred within or outside of an

20 employee's scope of employment are included in this definition.

21 (2) (a) "Employee" means an officer, employee, or servant of a governmental entity, including elected

22 or appointed officials, and persons acting on behalf of the governmental entity in any official capacity temporarily

23 or permanently in the service of the governmental entity whether with or without compensation.

24 (b) The term does not mean a person or other legal entity while acting in the capacity of an independent

25 contractor under contract to the governmental entity to which parts 1 through 3 apply in the event of a claim.

26 (3) "Governmental entity" means the state and political subdivisions.

27 (4) "Personal injury" means any injury resulting from libel, slander, malicious prosecution, or false arrest

28 and any bodily injury, sickness, disease, or death sustained by any person and caused by an occurrence for

29 which the state may be held liable.

30 (5) "Political subdivision" means any county, city, municipal corporation, school district, special

1 improvement or taxing district, other political subdivision or public corporation, or any entity created by agreement
2 between two or more political subdivisions.

3 (6) "Property damage" means injury or destruction to tangible property, including loss of use of the
4 property, caused by an occurrence for which the state may be held liable.

5 (7) "State" means the state of Montana or any office, department, agency, authority, commission, board,
6 institution, hospital, college, university, or other instrumentality of the state."

7

8 **Section 5.** Section 2-9-301, MCA, is amended to read:

9 **"2-9-301. Filing of claims against state and political subdivisions -- disposition by state agency**
10 **as prerequisite.** (1) All claims against the state of any type, including employment claims and all other claims
11 of employees against the state, and claims arising under the provisions of parts 1 through 3 of this chapter must
12 be presented in writing to the department of administration.

13 (2) A complaint based on a claim ~~subject to the provisions of subsection (1)~~ may not be filed in district
14 court unless the claimant has first presented the claim to the department of administration and the department
15 has finally denied the claim. The department ~~must~~ shall grant or deny the claim in writing within 120 days after
16 the claim is presented to the department. The failure of the department to make final disposition of a claim within
17 120 days after it is presented to the department must be considered a final denial of the claim for purposes of this
18 subsection. Upon the department's receipt of the claim, the statute of limitations on the claim is tolled for 120
19 days. The provisions of this subsection do not apply to claims that may be asserted under Title 25, chapter 20,
20 by third-party complaint, cross-claim, or counterclaim unless the alleged responsible party or the defendant is the
21 state.

22 (3) All claims against a political subdivision arising under the provisions of parts 1 through 3 ~~shall~~ must
23 be presented to and filed with the clerk or secretary of the political subdivision."

24

25 **Section 6.** Section 2-9-303, MCA, is amended to read:

26 **"2-9-303. Compromise or settlement of claim against state.** (1) (a) The department of administration
27 may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of
28 insurance, if any. A settlement from the self-insurance reserve fund or deductible reserve fund exceeding \$10,000
29 must be approved by the district court of the first judicial district except when suit has been filed in another judicial
30 district, in which case the presiding judge shall approve the compromise settlement.

1 (b) All records related to a compromise or settlement of a claim against the state must be retained for
2 a period of 20 years.

3 (2) (a) All terms, conditions, and details of the governmental portion of a compromise or settlement
4 agreement entered into or approved pursuant to subsection (1) are public records available for public inspection
5 unless a right of individual privacy clearly exceeds the merits of public disclosure.

6 (b) The compromise or settlement agreement must include a description of the alleged acts or omissions
7 forming the basis of the compromise or settlement agreement.

8 (3) An employee who is a party to a compromise or settlement entered into or approved pursuant to
9 subsection (1) may waive the right of individual privacy and allow the state to release all records or details of the
10 compromise or settlement, such as personnel records, that pertain to the employee personally and that would
11 otherwise be protected by the right of individual privacy subject to the merits of public disclosure."
12

13 NEW SECTION. Section 7. Codification instruction. [Sections 1 through 3] are intended to be codified
14 as an integral part of Title 2, chapter 9, and the provisions of Title 2, chapter 9, apply to [sections 1 through 3].
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16 NEW SECTION. Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable
17 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
18 remains in effect in all valid applications that are severable from the invalid applications.
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20 NEW SECTION. Section 9. Effective date. [This act] is effective July 1, 2019.
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22 NEW SECTION. Section 10. Retroactive applicability. [This act] applies retroactively, within the
23 meaning of 1-2-109, to any records related to a compromise or settlement that exist or are created from [the
24 effective date of this act] retroactively 10 years to the same date in 2009 as [the effective date of this act].
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